

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**CARMEN HENRY, as Personal Representative  
of the Estate of Trevon Lonte Williams, Deceased,**

**Plaintiff,**

**v.**

**No. 11cv0322 WJ/LAM**

**ALBUQUERQUE JOB CORPS CENTER, and  
DEL-JEN, INC., individually and as a  
foreign corporation,**

**Defendants.**

**ORDER DENYING WITHOUT PREJUDICE PLAINTIFF'S MOTION TO HOLD  
NON-PARTY WITNESS IN CONTEMPT OF COURT, FOR SANCTIONS AND TO  
COMPEL APPEARANCE AT DEPOSITION [Doc. 83]**

**THIS MATTER** is before the Court on Plaintiff's *Unopposed Motion to Hold Non-Party Witness in Contempt of Court, for Sanctions and to Compel Appearance at Deposition* (Doc. 83), filed April 18, 2014. Plaintiff asks the Court to hold non-party Anthony Everage in contempt of Court for failure to appear for a deposition scheduled for March 18, 2014, and to impose sanctions on Mr. Everage and order him to appear for his deposition. [Doc. 83 at 1]. Plaintiff mailed a copy of the motion to Mr. Everage (*see Doc 83 at 2*), but no response to the motion has been filed and the time for doing so has passed. Attached to the motion is a return of service for the subpoena to attend the deposition, which states that it was served on "Jennifer Jaramillo" on February 8, 2014. [Doc. 83-1 at 8]. At a telephonic status conference held by the Court on May 7, 2014, at which counsel for both parties appeared, the Court informed counsel for Plaintiff that it was unclear from the return of service where the subpoena was served or who "Jennifer Jaramillo" was. [Doc. 90 at 1] (Clerk's Minutes). Counsel for Plaintiff stated

that Ms. Jaramillo is Mr. Everage's wife and she accepted service at his home. The Court stated that this information is not before the Court in either the return of service or an affidavit. Counsel for Plaintiff stated that she would research the issue and file an amended motion. *Id.* It has now been four weeks since the telephonic status conference and Plaintiff has not amended her motion. The Court, therefore, will deny the motion without prejudice because there is no evidence before the Court that the subpoena was properly served on Mr. Everage. *See* Fed. R. Civ. P. 4(e) (setting forth how to serve an individual within a judicial district of the United States).

**IT IS THEREFORE ORDERED** that Plaintiff's *Unopposed Motion to Hold Non-Party Witness in Contempt of Court, for Sanctions and to Compel Appearance at Deposition* (Doc. 83) is **DENIED** without prejudice.

**IT IS SO ORDERED.**

  
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**LOURDES A. MARTÍNEZ**  
**UNITED STATES MAGISTRATE JUDGE**